

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PROMEDEV, LLC,

Plaintiff,

v.

ROBY WILSON, et al.,

Defendants.

CASE NO. C22-1063JLR

ORDER

**I. INTRODUCTION**

Before the court is Plaintiff / Counter-Defendant Promedev, LLC's ("Promedev") motion for reconsideration of the court's April 1, 2024 order. (Mot. (Dkt. # 94); *see* 4/1/24 Order (Dkt. # 93).) The court ordered Defendants / Counterclaimants Roby Wilson, MaXXiMedia Advertising Co. ("MaXXiMedia"), and Imagipix Corporation (collectively, "Defendants") to respond to Promedev's motion, and they timely did so. (*See* 4/4/24 Order (Dkt. # 95); Resp. (Dkt. # 102).) The court also permitted Promedev to file a reply brief, which it did. (Reply (Dkt. # 107).) The court has considered the

parties' submissions, the relevant portions of the record, and the governing law. Being fully advised,<sup>1</sup> the court GRANTS Promedev's motion for reconsideration.

## II. BACKGROUND

On April 1, 2024, the court granted in part and denied in part Promedev's motion for summary judgment on Defendants' counterclaims. (*See generally* 1/4/24 Order; Counterclaims (Dkt. # 25).) Relevant here, Defendants had brought a counterclaim for breach of contract based on several alleged breaches of the parties' July 31, 2020 agreement. (*See* Counterclaims ¶ 31. *See generally* 1/18/24 Wilson Decl. (Dkt. # 58) ¶ 8, Ex. A (agreement).) Although the court found that Promedev was entitled to summary judgment on most of Defendants' breach of contract theories, the court found that a genuine dispute of material fact existed as to whether Promedev breached the agreement's confidentiality clause by disclosing rates MaXXiMedia had negotiated on its behalf with Fox News to non-party Eicoff. (4/1/24 Order at 20-21 (finding that a reasonable jury could conclude that Promedev breached paragraph 7 of the agreement).)

In its present motion, Promedev argues that the court should have granted its motion for summary judgment in full because Defendants have set forth no evidence that they suffered damages for Promedev's alleged breach of the confidentiality clause. (Mot. at 5-6; *see also* Pl. MSJ (Dkt. # 72) at 20 (arguing, in a section responding to Defendants'

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<sup>1</sup> Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court concludes that oral argument would not assist with its disposition of Promedev's motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 claim for trade secret misappropriation, that “Maxximedia has not identified any damages  
2 caused by Promedev’s disclosure of the Fox rates”).)

3 The court ordered Defendants to respond to Promedev’s motion, directing them to  
4 “provid[e] evidence of damages caused by Promedev’s alleged breach of the  
5 Agreement’s confidentiality provision.” (4/4/24 Order at 2); *see also* Local Rules W.D.  
6 Wash. LCR 7(h) (governing motions for reconsideration). Defendants timely responded  
7 (*see generally* Resp.), and Promedev chose to file an optional reply brief (*see generally*  
8 Reply). The court sets forth the relevant legal standard before turning to Promedev’s  
9 motion.

### 10 III. ANALYSIS

#### 11 A. Legal Standard

12 “Motions for reconsideration are disfavored.” Local Rules W.D. Wash. LCR  
13 7(h)(1). Such motions require a showing of “manifest error in the prior ruling or . . . new  
14 facts or legal authority which could not have been brought to [the court’s] attention  
15 earlier with reasonable diligence.” Reconsideration is an “extraordinary remedy, to be  
16 used sparingly in the interests of finality and conservation of judicial resources.” *Kona*  
17 *Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). “Whether or not to  
18 grant reconsideration is committed to the sound discretion of the court.” *Navajo Nation*  
19 *v. Confederated Tribes & Bands of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th  
20 Cir. 2003).

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**B. Promedev's Motion for Reconsideration**

Promedev argues that the court should have granted its motion for summary judgment on Defendants' breach of contract claim premised on its disclosure of billing rates to Eicoff because Defendants have produced no evidence of damages. (Mot. at 1-2.) Defendants argue that "[t]here is no question that MaXXiMedia was harmed and Promedev benefited from Promedev's wrongful disclosure" but do not provide evidence of damages. (Resp. at 5.) Instead, Defendants aver that "[e]ven if the damages amount is nominal, a trier of fact may find that disclosure of the rates MaXXiMedia built over several decades in the media business have inherent value." (*Id.* at 4.) Alternatively, Defendants argue that they should be allowed to pursue unjust enrichment as a remedy for Promedev's alleged breach. (*Id.* at 5.) The court agrees with Promedev that there is no genuine dispute of material fact that Defendants suffered no harm as a result of Promedev's alleged breach.

Damages are an essential element of a breach of contract claim. *See Nw. Indep. Forest Mfrs. v. Dep't of Lab. & Indus.*, 899 P.2d 6, 9 (Wash. Ct. App. 1995) (listing breach of contract elements). In Washington, "a court may dismiss a breach of contract action if damages have not been suffered." *DC Farms, LLC v. Conagra Foods Lamb Weston, Inc.*, 317 P.3d 543, 553 (Wash. Ct. App. 2014). "Mere proof that there was a breach of contract without more will not support a verdict in favor of a [claimant], even for nominal damages." *Id.* This has been the law for over a century. *See Hewson v. Peterman Mfg. Co.*, 136 P. 1158, 1160 (Wash. 1913) ("[T]he law 'does not concern itself with trifles.' The case will not be retained for the purpose of determining the question of

1 nominal damages.” (citation omitted) (quoting *Matzger v. Page*, 113 P. 254, 255 (Wash.  
2 1911))).

3 In response to Promedev’s motion, the court ordered Defendants to produce  
4 evidence of harm (4/4/24 Order at 2), but Defendants failed to do so (*see generally*  
5 Resp.). The only evidence in the record addressing any such harm suggests that  
6 MaXXiMedia suffered no damages from the disclosure. At deposition, Mr. Wilson  
7 testified that MaXXiMedia was not “aware of any harm that has come to its business for  
8 the disclosure of billing rates that it alleges in this lawsuit.” (2/8/24 Rainwater Decl.  
9 (Dkt. # 73) ¶ 3, Ex. B at 264:6-9.) Mr. Wilson further testified that it “would be up to an  
10 expert to determine the damages.” (*Id.* at 264:4-5.) But Defendants’ damages expert did  
11 not “make any damages determination [concerning the] alleged breach in connection with  
12 Eicoff.” (2/8/24 Rainwater Decl. ¶ 13, Ex. L at 72:19-21.) Indeed, the expert confirmed  
13 at deposition that he “ha[d] not seen any evidence of damages MaXXiMedia incurred . . .  
14 in connection with Eicoff.” (*Id.* at 74:1-8.) The unrebutted evidence establishes that  
15 MaXXiMedia was not harmed by Promedev’s alleged breach.

16 Defendants’ argument concerning unjust enrichment as an alternative remedy  
17 fares no better because Defendants have likewise failed to present any evidence that  
18 Promedev benefited due to its breach. (*See generally* Resp.) The court shares the same  
19 question as Promedev: “What benefit did Promedev reap?” (Reply at 2.) Defendants  
20 assert that “[b]ut for its business relationship with MaXXiMedia, Promedev would not  
21 have known these rates or that it was possible to negotiate rates within that range for Fox  
22 News” (Resp. at 4), but that is pure speculation; Defendants’ rates could have been better

1 or worse than Eicoff's. Although Defendants explain that "Promedev's rates with Eicoff  
 2 were not provided in discovery" (*id.*), that is no excuse; Defendants should have filed a  
 3 motion to compel if they believed Promedev was withholding evidence necessary to put  
 4 on their damages case. The court will not permit Defendants to seek "disgorgement" of  
 5 Promedev's profits from breach in the absence of any evidence that said profits exist.  
 6 (*Id.* at 3); *see also* Restatement (Third) Restitution & Unjust Enrichment § 39 (Am. L.  
 7 Inst. 2011) ("Profits from breach include saved expenditure and consequential gains that  
 8 the defendant would not have realized but for the breach . . .").

9 Having confirmed that Defendants lack evidence of damages—an essential  
 10 element of their breach of contract claim—the court finds it necessary to correct its prior  
 11 order. Because the court now concludes that Promedev is entitled to judgment as a  
 12 matter of law, the court exercises its discretion to grant Promedev's motion for  
 13 reconsideration and therefore grants summary judgment to Promedev on Defendants'  
 14 entire breach of contract claim.

#### 15 IV. DUTY OF CANDOR

16 The court writes separately to address an issue it encountered with Defendants'  
 17 opposition brief. Defendants attribute the following quote to the Ninth Circuit: "***The***  
 18 ***Ninth Circuit has held*** that unjust enrichment can satisfy the damages element of a  
 19 breach of contract claim such that restitution or disgorgement is a proper remedy."  
 20 (Resp. at 3 (emphasis added) ("quoting" *Friedman v. EyeLight, Inc.*, No. 22-56076, 2023  
 21 WL 8915417, at \*3 (9th Cir. Dec. 27, 2023)).) The court was unable to locate this quote  
 22 in *Friedman*. The *Friedman* Court actually stated: "***California courts have recognized***

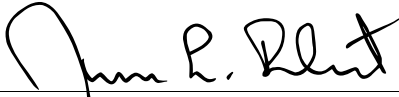
1 that unjust enrichment can satisfy the damages element of a breach of contract claim such  
2 that restitution or disgorgement is a proper remedy.” *Friedman*, 2023 WL 8915417, at \*3  
3 (emphasis added). Defendants’ misquotation of *Friedman* is not a benign mistake. It  
4 should go without saying that there is a material difference between “[t]he Ninth Circuit”  
5 and “California courts,” especially in the instant context where Washington law governs.

6 Defendants’ attorneys owe a duty of candor to the court. That duty requires them  
7 to correctly state the law. The court has already issued Rule 11 sanctions against  
8 Defendants’ attorneys. (*See generally* 4/11/24 Order (Dkt. # 110).) Should the court  
9 locate any other material misstatements of the law in Defendants’ future filings, the court  
10 will not hesitate to issue another order to show cause as to why additional sanctions  
11 should not be imposed.

## 12 V. CONCLUSION

13 For the foregoing reasons, the court GRANTS Promedev’s motion for  
14 reconsideration (Dkt. # 94). The court GRANTS Promedev’s motion for summary  
15 judgment on Defendants’ breach of contract claim and DISMISSES that claim with  
16 prejudice.

17 Dated this 12th day of April, 2024.

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19 JAMES L. ROBERT  
20 United States District Judge  
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